

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MASSACHUSETTS**

**11 CA 11754**

BARRY F.SHANNON, pro se

Plaintiff,

vs.

CITIBANK (SOUTH DAKOTA) N.A.,

LUSTIG, GLASER & WILSON, P.C.,

RICHARD TIRRELL,;

KENNETH C. WILSON,

DEAN HEINOLD

Defendants.

) Case No.: CIVIL ACTION NO.

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) **COMPLAINT AND DEMAND FOR**  
) **JURY TRIAL**

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FILED  
2011 OCT -4 P 12:02  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**COMPLAINT**

Plaintiff, Barry F. Shannon, individually, hereby sues Defendant(s) CITIBANK SOUTH DAKOTA N.A., LUSTIG, GLASER & WILSON, P.C., RICHARD TIRRELL, KENNETH C. WILSON AND DEAN HEINOLD for violations of the FAIR DEBT COLLECTIONS PRACTICES ACT, 15 U.S.C § 1692 et seq. ("FDCPA") and for violations of the FAIR CREDIT REPORTING ACT ("FCRA") 15 U.S.C § 1681 et seq. and for violations of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § Sec.227

**PRELIMINARY STATEMENT**

1. This is an action for damages brought by Plaintiff against Defendants for violations of the Fair Debt Collections Practices Act (FDCPA) 15 U.S.C § 1692e(2), § 1692 e(10) , §1692d(5) §1692f(1), and §1692g(b) and for damages for violations of the Fair Credit

Reporting Act (FCRA) 15 U.S.C § 1681b. As well damages for violations of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227(b)

### **JURISDICTION AND VENUE**

2. The jurisdiction of this Court is conferred by 15 U.S.C § 1681p and 15 U.S.C § 1692(k), 47 U.S.C. § 227(b)(3)
3. Venue is proper in this District pursuant to 28 U.S.C § 1391b.

### **PARTIES**

4. The Plaintiff, Barry F. Shannon, is a natural person residing in Wrentham, Massachusetts.
5. Plaintiff is a “consumer” as the term is defined by 15 U.S.C § 1692a(3)
6. Defendant Citibank South Dakota N.A., an unknown entity, with a place of business at 701 E. 60<sup>th</sup> North, Sioux Falls, SD 57117 is a debt collector as that term is defined by 15 U.S.C § 1692a(6)
7. Defendant Lustig, Glaser & Wilson P.C., is a debt collector as that term is defined by 15 U.S.C § 1692a(6) with an office located at 140 Kendrick Street, Building C, 3<sup>rd</sup> Floor, Needham, MA 02492.
8. Defendant, Richard Tirrell, is a debt collector as that term is defined by 15 U.S.C § 1692a(6) with an office located at 140 Kendrick Street, Building C, 3<sup>rd</sup> Floor, Needham, MA 02492.
9. Defendant, Kenneth C. Wilson, is a debt collector as that term is defined by 15 U.S.C § 1692a(6) with an office located at 140 Kendrick Street, Building C, 3<sup>rd</sup> Floor, Needham, MA 02492.

10. Defendant, Dean Heinold, is a debt collector as that term is defined by 15 U.S.C § 1692a(6) with an office located at 140 Kendrick Street, Building C, 3<sup>rd</sup> Floor, Needham, MA 02492.

### **FACTUAL ALLEGATIONS**

11. At all relevant times Defendant(s) was attempting to collect an alleged consumer debt from Plaintiff.
12. The alleged debt arose out of transactions which were primarily for family, personal or household purposes, which meets the definition of a “debt” under 15 U.S.C § 1692a(5).
13. The Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C § 1692a(2)
14. The Debt was purchased, assigned or transferred to Lustig, Glaser & Wilson P.C., for collection, or Lustig, Glaser & Wilson P.C. was employed by the Creditor to collect the Debt.
15. In connection with the collection of an alleged debt, Defendants sent Plaintiff initial written communication dated May 4, 2011 Defendants statements overshadowed and were inconsistent with the disclosures required by 15 U.S.C § 1692g(a) et seq. 15 U.S.C § 1692e(10), 15 U.S.C § 1692g(b)
16. On May 10, 2011 Plaintiff sent a demand for validation of the alleged debt. The letter was sent by registered mail and was received by Defendants on May 12, 2011. Validation as requested was ignored.
17. On June 21, 2011 I received a letter from Attorney Richard Tirrell attempting to collect a debt without proper validation.

18. On July 5, 2011 I received a letter from Lustig, Glaser & Wilson P.C. informing me of a lawsuit being filed in Wrentham District Court by Citibank (South Dakota) N.A., and attempting to collect a debt still without proper validation.
19. On August 10, I was served a summons Civil Action No. 1157 CV 0575
20. Defendant Citibank (South Dakota) N.A. failed to attach the alleged member agreement or any evidence that Plaintiff ever had an account with Citibank(South Dakota )N.A. another attempt to collect a debt without proper validation.
21. On August 18, 2011 I received yet another letter from Lustig, Glaser & Wilson P.C attempting to collect a debt without proper validation.
22. On September 15, 2011 I received a letter from Attorney Dean Heinold attempting to collect a debt without proper validation.
23. On June 25, 2011 and August 22, 2011 Lustig, Glaser & Wilson P.C. initiated telephone calls to Plaintiff's residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of Plaintiff.
24. On May 13, 2011 Lustig, Glaser & Wilson P.C. initiated a soft pull of Plaintiff's credit report from Experian without permissible purpose.

### **Count I**

#### **Violations of the FDCPA 15 U.S.C § 1692, et seq.**

25. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein
26. All Defendants violated the FDCPA. Defendants violations include but are not limited to, the following:

27. The Defendants conduct violated 15 U.S.C § 1692e(2) in that the Defendants misrepresented the character, amount and legal status of the debt.
28. The Defendants conduct violated 15 U.S.C § 1692e(10) in that Defendants employed false representation and deceptive means to collect a debt.
29. The Defendants conduct violated 15 U.S.C § 1692f(1) by the collection of any amount ( including any interest, fee, charge, or expense incidental to the principle obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
30. The Defendants conduct violated 15 U.S.C § 1692g (b) in that Defendants continued collection efforts even though the debt had not been validated.
31. The Defendants conduct violated 15 U.S.C § 1692d (5) in that Defendants caused the Plaintiffs phone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff.

**WHEREFORE**, Plaintiff demands judgment for damages against Defendants CITIBANK SOUTH DAKOTA N.A., LUSTIG, GLASER & WILSON, P.C., RICHARD TIRRELL, KENNETH C. WILSON and DEAN HEINOLD for actual or statutory damages, and punitive damages, attorney's fees and costs, pursuant to 15 U.S.C § 1692k.

## **Count II**

### **Violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C § 1681**

32. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
33. Plaintiff is a consumer within the meaning of FCRA, 15 U.S.C § 1681a(c)

34. Defendant is a furnisher of information within the meaning of the FCRA, 15 U.S.C § 1681s-2

35. The Defendants willfully violated 15 U.S.C § 1681b(f) by obtaining Plaintiff's consumer report without a permissible purpose as defined by 15 U.S.C § 1681b.

36. **WHEREFORE**, Plaintiff demands judgment for damages against Defendants CITIBANK SOUTH DAKOTA N.A., LUSTIG, GLASER & WILSON, P.C., RICHARD TIRRELL, KENNETH C. WILSON AND DEAN HEINOLD for actual or statutory damages, and punitive damages, attorney's fees and costs, pursuant to 15 U.S.C § 1681o.

### **Count III**

#### **Violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227**

37. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. Lustig, Glaser & Wilson P.C. willfully or knowingly violated 47 U.S.C. §227(b)(1)(B) by initiating telephone calls to plaintiff's residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of Plaintiff.

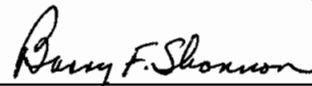
**WHEREFORE**, Plaintiff demands judgment for damages against Lustig, Glaser & Wilson P.C. for actual or statutory damages, and attorney's fees and costs, pursuant to 47 U.S.C. §227(b)3

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Dated this 28<sup>th</sup> day of September, 2011

Respectfully submitted,

A handwritten signature in cursive script, reading "Barry F. Shannon".

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